IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 384 of 2005 (M/B)

M/s Kedar Nath Bishan Lal (HUF)
Through its Karta Sri Lal Chand,
Manglore Town, Tehsil Roorkee,
District Haridwar. ..... Petitioner.

Versus

1. Chief Commissioner of Income Tax,
   Range Dehradun, District-Dehradun.
2. Commissioner of Income Tax, Dehradun,
   District Dehradun.
3. Additional Commissioner of Income Tax,
   Range Haridwar, District-Haridwar.
4. Incom Tax Officer, Ward-I, Roorkee,
   District Haridwar. ..... Respondents.

Sri L.P. Naithani, learned Senior Advocate for the petitioner.
Sri Pitamber Maulekhi, learned Standing Counsel for the respondents/Income Tax Department.

Dated: 03.07.2006

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This petition has been filed by the petitioner challenging the assessment order dated 18.03.2005, contained in Annexure No.13 to the writ petition, passed by the Income Tax Officer/respondent No.4 as well as the corrigendum dated 21.3.2005 and the notices issued under Section 226(3) of the Income Tax Act 1961 dated 21.03.2005.

2. Admittedly, the petitioner has filed statutory appeals against the said assessment order before the Commissioner of Income Tax, Dehradun/respondent No.2. Though the petitioner filed application to the

respondent No.4 under Section 220(6) of the Income Tax Act, 1961 for treating the petitioner as not being in default in respect of the amounts in dispute in the appeal, that application has been rejected by the respondent no.4. It is contended by the petitioner that having regard to the facts and circumstances of the case, the application filed under Section 220 (6) of the Income Tax Act should have been allowed by the respondent no.4.

2. Having considered the materials placed on record and the submissions made by the learned counsel for the parties we are of the view that pending disposal of the statutory appeals filed by the petitioner, the recovery of the amounts due under the assessment order should have been kept in abeyance. Having regard to the facts and circumstances of the case, the petitioner was entitled to an order in his favour on the application filed by him under Section 220 (6) of the Income Tax Act as he had made out a strong prima facie case against the order under appeal. Hence, we are inclined to quash the impugned order dated 18.03.2005 and to direct the respondent No.2 to consider and dispose of the statutory appeal filed by the petitioner as expeditiously as possible and also to direct the respondent No.4 not to take any steps for recovery of the amount due under the impugned assessment order till the disposal of the appeal.

4. Hence, the writ petition is disposed of in the following terms:-

i. The impugned order dated 18.03.2005 as well as the corrigendum dated 21.03.2005 and the notice dated 21.03.2005 issued under Section 226(3) of the Income Tax Act, 1961 are quashed.

ii. The respondent No.2/Commissioner of Income Tax, Dehradun is directed to consider and dispose of the statutory appeal filed by the petitioner against the assessment order Annexure 13 as expeditiously as possible.

iii. The respondents are directed not to take any steps for recovery of the amounts due under the assessment order Annexure-13 till the disposal of the statutory appeal filed by the petitioner.

(B.S. Verma, J.) **(P.C. Verma, J.)**

03.07.2006
P.Singh